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**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**Trademark Trial and Appeal Board**

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In re The Board of Regents of the University of Nebraska of  
Varner Hall, assignee of Nebraska Technology Development  
Corporation<sup>1</sup>

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Serial No. 75/766,621  
Serial No. 75/766,623

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Christopher M. Goff and Laura R. Polcyn of Senniger,  
Powers, Leavitt & Roedel for applicant.

Rebecca A. Smith, Trademark Examining Attorney, Law Office  
110 (Chris A.F. Pedersen, Managing Attorney).

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Before Hohein, Chapman and Wendel, Administrative Trademark  
Judges.

Opinion by Chapman, Administrative Trademark Judge:

On August 3, 1999, applicant filed two applications,  
both to register on the Principal Register the mark shown

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<sup>1</sup> The original applicant, Nebraska Technology Development Corporation, assigned both involved applications to The Board of Regents of the University of Nebraska of Varner Hall, and recorded the assignment document with the Assignment Branch of the USPTO. See Reel 2047, Frame 0234.

below. In addition, both applications include a disclaimer of ".com," and the following description of the mark: "The mark comprises the letter C next to a globe, with the words CLASS.COM printed beneath said logo."



Application Serial No. 75/766,621 was originally based on claimed use dates of October 1998, but in applicant's June 23, 2000 response, it requested that the basis be changed from Section 1(a) of the Trademark Act to Section 1(b), claiming a bona fide intention to use the mark, which was accepted by the Examining Attorney pursuant to Trademark Rule 2.34(a)(2)(i). See also, TMEP §806.03(c) (Third Edition 2002). The goods and services involved in that application were amended several times and ultimately were set forth as follows:

"educational software featuring courses of instruction at the high school level rendered remotely via a global computer network on a private, independent-study, single-student basis" in International Class 9; and

"educational services, namely, providing courses of instruction at the high school level rendered remotely via a global computer network on a private,

independent-study, single-student basis" in International Class 41.

Application Serial No. 75/766,623 was originally based on applicant's assertion of a bona fide intention to use the mark in commerce, and that remains the basis of the application. The goods involved therein were amended several times and ultimately were set forth as follows:

"printed instructional materials, namely instructional course materials in the fields of high school equivalency diploma certification and high school education for use in connection with courses of instruction rendered remotely via a global computer network on a private, independent-study, single-student basis" in International Class 16.

Registration has been finally refused in each application under Section 6(a) of the Trademark Act, 15 U.S.C. §1056(a), on the basis of applicant's failure to comply with a requirement to disclaim the words "CLASS.COM." Such term, according to the Examining Attorney, is merely descriptive of applicant's goods and services within the meaning of Section 2(e)(1) of the Trademark Act, 15 U.S.C. §1052(e)(1), and therefore must be disclaimed. However, in view of applicant's disclaimer of ".com," and as the Examining Attorney stated in her briefs on appeal, "the only issue on appeal is the requirement for the disclaimer of the term CLASS." (Briefs, p. 2.)

Applicant has appealed, and briefs have been filed in each application. Applicant did not request an oral hearing in either application.

Because the applications involve common questions of law and fact, and in the interests of judicial economy, we have consolidated the appeals for purposes of final decision. Thus, we have issued this single opinion.

It is the Examining Attorney's position that the term 'CLASS' is merely descriptive of a feature of applicant's goods and services. That is, applicant offers classes or courses of instruction which are available through its computer software; that applicant's instructional course materials are used to teach classes; and that applicant's educational service involves providing courses or classes.

As evidence in support of her position, the Examining Attorney submitted (i) the following dictionary definition of the term "class" from The American Heritage Dictionary (1992): "4. b. a group of students who meet at a regularly scheduled time to study the same subject. c. the period during which such a group meets: had to stay after class"; and (ii) printouts of excerpted stories retrieved from the Nexis database to demonstrate that the term "class" is used synonymously with the term "course" to mean educational classes, as well as additional Nexis stories to demonstrate

that "class" is often used to refer to on-line courses or classes. Some representative examples of these stories are set forth below (emphasis added):

Headline: Area School Districts Plan  
United Push for More State Aid  
...For example, the state guidelines  
are based on high schools using a six-  
period day. But as districts have  
pushed students to take more rigorous  
**courses**, schools have added more  
periods to fit those **classes** into the  
school day....  
"The Washington Post," September 6,  
2000;

Headline: Irish Dance Classes Are  
Stepping Into Suburbs  
Lake in the Hills and the Hampshire  
Park District will team up to offer  
Irish step dance **classes** beginning  
Wednesday. They are among the latest  
to bring Irish dance **courses**,...  
"Chicago Tribune," September 5, 2000;

Headline: Hanahan Students Celebrate  
Jump in SAT Scores  
Turner and Cross Principal Figgins  
Frayer plan to offer enrichment  
**courses**, possibly during the summer,  
for students who are serious about  
college. Those **classes** will  
concentrate on English and math skills.  
"The Post and Courier" (Charleston,  
SC), September 5, 2000;

Headline: Playing at the Fair;  
Politiking [sic] for the Eager  
...Higher Education is reporting an  
impressive gain in the number of people  
taking college **courses** over the  
Internet. According to the IBHE, the  
number of enrollees this spring in the  
Illinois Virtual Campus - 26,214 - is

almost double the number of students who took **on-line classes** last fall. "The Pantagraph" (Bloomington, IL), August 20, 2000; and

Headline: Atlanta Public School Students Taking **On-Line Classes** at Home ...District educators have developed several **on-line classes** - including algebra I, algebra II, advanced placement language arts and economics - that will count toward graduation. The **courses** cost \$275 each. The state's largest school district is the first in Georgia to offer **on-line courses** developed by its educators to all of its high school students. Students at about 20 Georgia high schools take **on-line classes** through the Virtual High School project, a Concord, Mass.-based program developed with a federal grant to offer challenging **Web-based courses**. "The Washington Times," August 11, 2000.

Applicant maintains that the term 'CLASS' is suggestive and does not immediately convey the nature of applicant's goods and services because the term has numerous definitions; that the term "class" carries a suggestive double entendre suggesting applicant's goods and services are "high quality" or the "best of their kind"; that applicant does not offer courses to a traditional group of students meeting together at a single location; and that any doubt as to mere descriptiveness is resolved in applicant's favor.

In support of its position applicant referenced two different dictionaries to show the multiple meanings of the term "class." In applicant's June 23, 2000 response (unnumbered p. 4) applicant sets forth 10 definitions of the term from Webster's New Collegiate Dictionary, including the following:

"(1) a group sharing the same economic or social status (i.e., the working class); (2) social rank, especially high social rank; (3) high quality (elegance); (4) a course of instruction; (5) a body of students meeting regularly to study the same subject, or the period during which such a body meets; (6) a body of students or alumni whose year of graduation is the same...."

In applicant's brief (p. 4) applicant sets forth 13 definitions of the term from Merriam-Webster's Collegiate Dictionary, including the following:

"(1) a body of students meeting regularly to study the same subject; (2) the period during which such a body meets; (3) a course of instruction; (4) a body of students or alumni whose year of graduation is the same; (5) a group sharing the same economic or social status (i.e., the working class); (6) social rank, especially high social rank; (7) high quality (elegance)...."

The other evidence submitted by applicant consists of photocopies of USPTO database records of eight third-party registrations to show how the USPTO "has decided analogous

cases." (Reply brief, p. 2.) Applicant explained that "[s]ignificantly, none of these examples disclaim the term CLASS or COURSE, and none were issued under the provisions of Section 2(f)." (Emphasis in original.) (Reply brief, p. 3.) Evidence submitted for the first time with the reply brief is untimely and will not be considered. See Trademark Rule 2.142(d). However, even if this evidence had been considered, we point out that in seven of the eight third-party registrations the involved mark was presented as one word with no space, or with a hyphen or a period (i.e., "dot") between the words. Therefore, standard USPTO disclaimer policy would be that a disclaimer is not generally required in those situations. See TMEP §§1213.05(a) and (a)(ii). The remaining third-party registration is for the mark QUICK COURSE (Reg. No. 1,699,808), and it, in fact, does include a disclaimer of the word "CLASS."

Moreover, we note applicant's specimens submitted in application Serial No. 75/766,621 (originally based on claimed dates of first use, but later amended to be based on applicant's assertion of a bona fide intention to use the mark in commerce). The specimens appear to be printouts from applicant's website, carrying the title "CLASS.COM Preliminary Website"; and including statements



such as the following: "CLASS.COM will offer complete online high school courses, course services....," and "These courses are now in use as part of an accredited online high school operated by the Division of Continuing Studies Independent Study High School at the University of Nebraska-Lincoln."

It is well settled that a term or phrase is considered merely descriptive of goods or services, within the meaning of Section 2(e)(1), if it immediately conveys information concerning a significant ingredient, quality, characteristic or feature thereof, or if it directly conveys information regarding the nature, function, purpose or use of the goods or services. See *In re Abcor Development Corp.*, 588 F.2d 811, 200 USPQ 215 (CCPA 1978). Moreover, whether a term or phrase is merely descriptive is determined in relation to the goods or services for which registration is sought. See *In re Bright-Crest, Ltd.*, 204 USPQ 591 (TTAB 1979). See also, *In re Consolidated Cigar Co.*, 35 USPQ2d 1290 (TTAB 1995); and *In re Pennzoil Products Co.*, 20 USPQ2d 1753 (TTAB 1991).

The Examining Attorney has established the significance or meaning of the term 'CLASS,' as merely descriptive of a significant feature of applicant's goods and services, specifically, that applicant provides

consumers with a "class" in the context of applicant's educational services, educational software and its education instructional materials. In fact, the fourth listed definition in Webster's dictionary and the third definition in Merriam-Webster's dictionary of "class," submitted by applicant, both support that fact -- "a course of instruction."

Applicant's argument that the term has multiple meanings (e.g., social or economic status, high quality, alumni who graduated the same year) is simply not persuasive as the Board must consider the question of mere descriptiveness not in a vacuum, but in the context of the identified goods and services. Further, applicant's argument that the mark has a double entendre is essentially relating the term "class" specifically to one of the many definitions thereof--that is, high quality, elegance. This is not so much a double entendre as it is simply emphasizing one of the numerous meanings already argued by applicant.

Applicant's argument that its identified goods and services do not involve "a body of students meeting regularly to study the same subject" is unpersuasive of a different result herein. It is clear that applicant's goods and services, as identified, will be used or offered

through the Internet and not in a traditional "brick and mortar" school. However, the "body of students meeting together.." is simply one of the definitions of "class". The record is clear that "class" also means "a course of instruction" which is clearly involved in applicant's goods and services. The method by which the goods and services are offered is not determinative, especially where, as here, the Examining Attorney has submitted several stories retrieved from Nexis establishing that it is commonly understood that a person may individually take an online course or class.

The Examining Attorney has established that "class" is a merely descriptive term in the relevant fields involved in applicant's goods and services. Applicant has not overcome the Examining Attorney's evidence of the ordinary meaning of the term "class" in relation to applicant's identified goods and services. See *In re Omaha National Corporation*, 819 F.2d 1117, 2 USPQ2d 1859 (Fed. Cir. 1987) (Court affirmed the Board's decision on a requirement for a disclaimer of the merely descriptive term "FirstTier" for banking services); *In re Lean Line, Inc.*, 229 USPQ 781 (TTAB 1986) (requirement for a disclaimer of the merely descriptive term "lean" for a variety of low calorie foods affirmed); *In re IBP, Inc.*, 228 USPQ 304 (TTAB 1985)

(requirement for a disclaimer of the merely descriptive terms "select trim" for pork affirmed); and In re Truckwriters Inc., 219 USPQ 1227 (TTAB 1983), aff'd unpubl'd Appeal No. 84-689 (Fed. Cir., November 1, 1984) (requirement for a disclaimer of the merely descriptive term "writers" for insurance agency services affirmed).

As our primary reviewing court stated in Dena Corp. v. Belvedere International Inc., 950 F.2d 1555, 21 USPQ2d 1047, 1051 (Fed. Cir. 1991):

The Lanham Act's disclaimer requirement strikes a statutory balance between two competing trademark principles. On the one hand, it provides the benefits of the Lanham Act to applicants for composite marks with unregistrable components. On the other hand, the Act prevents an applicant from claiming exclusive rights to disclaimed portions apart from composite marks. The applicant's competitors in the same trade must remain free to use descriptive terms without legal harassment. DeWalt, Inc. v. Magma Power Tool, 289 F.2d 656, 662, 129 USPQ 275, 281 (CCPA 1961). By encouraging definition of the rights claimed in a composite mark, the Act discourages unnecessary litigation.

**Decision:** The requirement under Section 6 for a disclaimer of the term 'CLASS' is affirmed in each application. However, this decision will be set aside and the marks published for opposition if applicant, no later than thirty days from the mailing date hereof, submits an

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appropriate disclaimer of 'CLASS' in the applications. See  
Trademark Rule 2.142(g).